

REMARKS/ARGUMENTS

Claims 1-26 were previously pending in the application. Claims 27-29 are added herein. Assuming the entry of this amendment, claims 1-29 are now pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

Rejections Under 35 U.S.C. 103

In paragraph 3 of the Office Action, the Examiner rejected (i) claims 1-3, 11-13, and 21-26 under 35 U.S.C. 103(a) as being unpatentable over Gebis in view of Lund and (ii) claims 4-10 and 14-20 under 35 U.S.C. 103(a) as being unpatentable over Gebis and Lund in view of Schmidt. For the following reasons, the Applicant submits that all of the pending claims are allowable over the cited references.

Claims 1 and 11

Claim 1 recites “[a] method of wirelessly providing, over the Internet, access to specialized content by a user, comprising the steps of: providing one or more wireless connection nodes in a geographically defined receiving area; delivering over the Internet to said one or more wireless connection nodes content selected by an operator of said one or more wireless connection nodes wherein said content is (1) specific to said geographically defined receiving area and (2) selected by the operator independent of the user and independent of any preference of the user; and transmitting said delivered content via said one or more wireless connection nodes.”

The Examiner asserted that “Gebis discloses a system comprising a portable personal radio (PPR) . . . , a PPR server located between the Internet and the PPR . . . , and the wireless communication link between the two (*wirelessly providing, over the Internet, access to specialized content by a user, providing one or more wireless connection nodes in a receiving area, delivering to said one or more connection nodes only content selected by an operator of said one or more wireless connection nodes, and transmitting said delivered content via said one or more connection nodes*, column 2, lines 24-32).” (Office Action, page 3.) The Examiner admitted that “Gebis fails to disclose delivering content selected by the operator independent of the user and independent of any preference of the user” and asserted that “Lund discloses transmitting information without user request” (Id., citing Lund, paragraph 0024.) The Examiner concluded that “[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis with the teaching of Lund for the benefit of providing automatic delivery of critical information to mobile users.” (Id.)

The Applicant respectfully submits that, even assuming for the sake of argument that the Examiner's assertions regarding the teachings of Gebis and Lund are correct, the rejection of claim 1 is improper, because neither Gebis nor Lund teaches the limitation that “said content is specific to said geographically defined receiving area,” as recited in claim 1.

For all these reasons, the Applicant submits that claim 1 is allowable over Gebis and Lund. For similar reasons, the Applicant submits that claim 11 is also allowable over those references.

Because claims 2-10 and 12-26 depend directly or indirectly from claims 1 or 11, it is further submitted that those claims are also allowable over the cited references.

The Applicant therefore respectfully submits that the rejections of claims 1-26 under Section 103 have been overcome.

Claims 4 and 14

Claim 4 recites the additional limitations that "(i) said receiver is further configured to separately tune to each of the plural stations, (ii) said transmission step further comprising at least the step of: transmitting a unique spreading code for each of said plural stations; and (iii) said receiving step comprising at least the steps of: (a) receiving said unique spreading codes; (b) selecting one of said plural stations to play; and (c) using said unique spreading codes to play the delivered content associated with the selected one of said plural stations." (Enumeration added for clarity.)

The Examiner admitted that Gebis fails to disclose transmitting a unique spreading code for each of plural stations, receiving the unique spreading codes, selecting one of plural stations to play, and using the unique spreading codes to play the delivered content associated with the selected one of plural stations. (See Office Action, page 4.) The Examiner asserted that Schmidt, column 2, lines 11-18, discloses separating message channels with different sets of code words and receiving information necessary for accessing channels by using spread codes. The Examiner further asserted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Gebis to implement the feature of sending a unique spreading code for each station to allow different radio networks to share the radio spectrum. The Applicant respectfully disagrees, because the motivation to combine Gebis, Lund, and Schmidt alleged by the Examiner lacks merit.

According to the Supreme Court in KSR Int'l Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007), it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed (Slip. Op. at 144). Moreover, in her May 3, 2007 Memorandum to Technology Center Directors, Margaret A. Focarino, Deputy Commissioner for Patent Operations, clearly states that "in formulating a rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed."

Here, Gebis discloses a portable personal radio (PPR) that allows a user to listen to audio information that is personalized to the user by a PPR server and then is transmitted to the user's device. Communication between the user's device and the PPR server begins by establishing a communications channel between the user's device and the PPR server. According to Gebis, the channel may be established via a cellular phone with a separate or integrated cellular modem, a cellular-digital-packet-data-capable phone, or a wireless data radio. (See Gebis, column 4, lines 27-43.) After a communication channel is established, the client identifies itself to the server and sends a request for specific content from the server, which in turn begins sending the requested content, which is personalized to the user. (See id, column 4, lines 44-50; column 5, lines 9-14.) As such, it is clear from Gebis that each user's device in the PPR system establishes a unique channel with the PPR server, so that content personalized to the user may be transmitted to, and received by, the user.

The Examiner asserted that one of ordinary skill in the art would be motivated to modify the system of Gebis to provide a unique spreading code for each station to allow different radio networks to share the radio spectrum. But the Examiner fails to account for the fact that, in

Gebis, a unique communication channel between the user's device and the PPR server is already established. Given the existence of the unique communication channel between the user's device and the PPR server, the alleged motivation to combine Gebis and Schmidt (i.e., to allow different radio networks to share the radio spectrum) is illusory. Further encoding station content to further subdivide the radio spectrum would simply be expensive and unnecessary.

Such hindsight reasoning is clearly an improper basis for the finding of obviousness. See, e.g., *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) ("[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'"); *Texas Instruments Inc. v. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 1178, 26 USPQ2d 1018, 1029 (Fed. Cir. 1993) ("Absent . . . [a] suggestion to combine the references, respondents can do no more than piece the invention together using the patented invention as a template. Such hindsight reasoning is impermissible."); *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) ("As in all determinations under 35 U.S.C. section 103, the decisionmaker must bring judgment to bear. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps."); *Symbol Technologies Inc. v. Opticon Inc.*, 17 USPQ2d 1737, 1746 (S.D.N.Y. 1990), aff'd, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991) ("That a technician, in hindsight, could combine elements known within the technology to produce the contested patent does not make the patent obvious to one skilled in the art at the time the patent was issued."); *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art . . . Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure."); *In re Stencel*, 828 F.2d 751, 755, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987) (obviousness cannot be established "by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion that the combination be made.").

In contrast, only the Applicant has proposed the use of spreading codes to differentiate each Internet radio station (or webcast) within a channel: "In accordance with the present invention, the content provider who controls server 112 can lease at least one RF band [a.k.a., channel] on the cellular radio tower 110. This enables the content provider to deliver several 'stations' (e.g., 20 to 40 stations, depending upon the basic operation of a particular CDMA cell). Each 'station' has a unique spreading code and thus is separately 'tunable'." (Specification, page 5, lines 13-16.) Further, "information is passed from the base station to all the hand-held mobile terminal devices in the area, providing information on what spreading codes are used and what stations are associated with the codes." (Id., page 9, line 8-10.) The Applicant respectfully submits that this use of existing cellular technology to provide a plurality of streaming Internet radio stations to a digital radio receiver (i) represents a significant contribution to the art of personal digital radio and (ii) is both novel and nonobvious.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertions that claim 4 is allowable over the cited references, and, for similar reasons, claim 14 is also allowable over the cited references.

Since claims 5-10 depend directly or indirectly from claim 4 and claims 15-20 depend directly or indirectly from claim 14, it is further submitted that the above discussion provides additional reasons for the assertion that those claims are also allowable over the cited references.

Claim 21

Claim 21 recites “[t]he system of claim 11, further comprising one or more other wireless connection nodes in an other geographically defined receiving area different from said geographically defined receiving area, each of said one or more other wireless connection nodes including an other transmitter, wherein other content transmitted by each other transmitter is (1) specific to said other geographically defined receiving area, (2) selected independent of the user and independent of any preference of the user, and (3) different from said content specific to said geographically defined receiving area.”

The Examiner did not provide any explanation whatsoever to support the rejection of claim 21. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitation recited in claim 21.

The Applicant therefore respectfully submits that the rejection of claim 21 is improper and should be withdrawn.

Claim 22

Claim 22 recites “[t]he method of claim 1, further comprising: providing one or more other wireless connection nodes in an other geographically defined receiving area different from said geographically defined receiving area; delivering other content to said one or more other wireless connection nodes, wherein said other content is (1) specific to said other geographically defined receiving area, (2) selected independent of the user and independent of any preference of the user, and (3) different from said content specific to said geographically defined receiving area; and transmitting said delivered other content via said one or more other wireless connection nodes.

The Examiner did not provide any explanation whatsoever to support the rejection of claim 22. Indeed, the Examiner has failed even to allege that the cited references teach or even suggest the limitation recited in claim 22.

The Applicant therefore respectfully submits that the rejection of claim 22 is improper and should be withdrawn.

Claims 23 and 24

Claim 23 recites "[t]he system of claim 21, further comprising: a receiver (i) in wireless communication with said one or more wireless connection nodes at a first time and (ii) in wireless communication with said one or more other wireless connection nodes at a second time, said receiver receiving said transmitted delivered content at said first time and said other transmitted delivered content at said second time, wherein the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives."

The Examiner asserted that Gebis teaches the limitations of claim 23 at column 3, lines 44-50. (See Office Action, page 4.) The Applicant respectfully disagrees. Gebis, column 3, lines

44-50, states: "Once a communication channel is established, in one preferred embodiment of the present invention, the client identifies itself to the server. Requests are sent from the client to the server, and responses, in the form of control messages or data, are sent back. Requests may consist of actions such as changing channels, starting or stopping data flow, and ending a section." The Applicant submits that Gebis, column 3, lines 44-50, neither teaches nor even suggests the claimed limitation of said receiver receiving said transmitted delivered content at said first time and said other transmitted delivered content at said second time, wherein the content available to the receiver at each of the first and second times is pre-specified based on the wireless connection node whose transmission the receiver receives.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertions that claim 23 is allowable over the cited references, and, for similar reasons, claim 24 is also allowable over the cited references.

Claims 25 and 26

Claim 25 depends from claim 1 and recites the additional limitation that the content available to the users is pre-specified based solely on the wireless connection node whose transmission the receiver receives, such that no determination of the user's current geographic location is required before the delivered content is transmitted.

The Examiner admitted that Gebis fails to disclose that the content available to the users is pre-specified based solely on the wireless connection node whose transmission receiver receives, such that no determination of the user's current geographic location is required before the delivered content is transmitted. (Office Action, page 3.) The Examiner asserted that Lund "discloses transmitting information without user request and determination of the user's current geographic location." (Id., citing Lund, paragraph 0024.)

The Applicant respectfully submits that, even assuming for the sake of argument that the Examiner's assertion regarding the teaching of Lund is correct, the rejection of claim 25 is improper, because neither Gebis nor Lund teaches the limitation that "the content available to the users is pre-specified based solely on the wireless connection node whose transmission the receiver receives," as recited in claim 25.

The Applicant therefore respectfully submits that the above discussion provides additional reasons for the assertions that claim 25 is allowable over the cited references, and, for similar reasons, claim 26 is also allowable over the cited references.

New Claims

The Applicant has added new claims 27-29. New claim 27 is directed to a method of broadcasting. A wireless connection node receives first content originating from a first content source and second content originating from a second content source. The wireless connection node spreads the first content using a first spreading code and the second content using a second spreading code. The wireless connection node then broadcasts the first and second spreading codes and the spread first and second content. As such, a plurality of receivers configured (i) to receive the spread first and second content and the first and second spreading codes and (ii) to despread a selected one of the spread first and second content using a corresponding one of first and second spreading codes may play the selected one of the first and second content.

Claim 28 depends from claim 27 and recites the additional limitation that the first content and the second content comprise information specific to a geographically defined receiving area comprising the wireless connection node. Claim 29 also depends from claim 27 and recites the additional limitation that the first and second contents are digital streaming media signals, and the first and second content sources are digital streaming media servers.

Support for claims 27-29 is found in the specification on page 1, lines 13-17; page 5, lines 3-16; page 7, line 16 to page 8, line 2; and page 9, lines 6-13. None of the cited references teach or even suggest a method of wireless broadcasting as recited in claim 27 or the additional limitations of claims 28-29. For this reason, the Applicant submits that claims 27-29 are allowable over the cited art.

Conclusion

For the reasons set forth above, the Applicant respectfully submits that the rejections of claims 1-26 under Section 103(a) have been overcome. Furthermore, new claims 27-29 patentably define over the cited references.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to Mendelsohn & Associates, P.C. Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

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